

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Rules and Policies on Foreign )  
Participation in the U.S. )  
Telecommunications Market )

IB Docket No. 97-142

REPLY COMMENTS OF TELIA NORTH AMERICA, INC.

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## SUMMARY

The majority of the commenting parties -- both U.S. and foreign -- supported the Commission's goal of eliminating unnecessary regulatory burdens placed on foreign-affiliated carriers. In particular, these parties urged the Commission to permit such carriers to add or discontinue circuits without prior approval and to file tariffs for international services on one day's notice under a presumption of lawfulness. Such measures, these parties explained, will benefit consumers by allowing foreign-affiliated carriers to respond more rapidly to competitive pressure to lower prices or to meet demand.

Of all the commenting parties, only a few would have the Commission increase the regulatory burdens placed on carriers from competitive WTO markets. As demonstrated by the comments, however, increased regulatory burdens, such as structural separation, are not necessary. First, by opening foreign markets, the WTO Agreement will enable U.S. carriers to bypass incumbent foreign carriers, either by corresponding with new entrants in WTO markets or by entering these markets themselves and engaging in self-correspondence. This, a number of commenters recognized, will effectively eliminate the ability of foreign carriers to discriminate in the provision of international facilities and services.

Second, the Commission's adoption of benchmark settlement rates and, in particular, the requirement that U.S. carriers settle with foreign affiliates at rates that are at or below the benchmarks will prevent leveraging behavior by foreign carriers. Moreover, given the relative size of many foreign carriers, the risk that cross-subsidization would distort competition in the U.S. international telecommunications market is minimal.

Third, the Commission has determined that it is "not necessary" to impose dominant carrier regulation on the out-of-region interexchange operations of local exchange carriers, such as the Bell Operating Companies. Accordingly, the Commission should not impose structural separation or other enhanced safeguards on carriers from WTO countries that originate traffic in a region (the United States) where they do not control bottleneck facilities.

In addition to being unnecessary, increasing the regulatory safeguards placed on foreign-affiliated carriers also would be counterproductive. In this regard, a number of commenters cautioned that subjecting foreign-affiliated carriers to stringent requirements could provide foreign governments with a pretext for imposing even more stringent requirements on U.S. carriers. This, several commenters observed, would undermine the agreement which the U.S. worked so hard to conclude. Several other commenters pointed out that additional regulations would only diminish the ability of foreign-affiliated carriers to compete and thus frustrate the Commission's goal of promoting effective competition. Rather than increasing the regulatory burdens placed on foreign-affiliated carriers, the Commission should seek to minimize these burdens.

The Commission also should bring its international settlements policy in line with the liberalized, competitive global market shaped by the WTO Agreement. As suggested by a number of parties, accounting rate flexibility should be the rule for all operators from WTO countries. In particular, the Commission should encourage carriers from competitive WTO markets to enter into alternate arrangements, including arrangements where a carrier -- either by itself or in combination with a foreign affiliate -- provides a "full circuit" that is interconnected at either end under non-discriminatory rates, terms and conditions.

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**REPLY COMMENTS OF TELIA NORTH AMERICA**

Telia North America, Inc. ("Telia NA"), by its attorneys, hereby replies to the comments that were filed in response to the Notice of Proposed Rulemaking ("Notice"), which the Commission issued in the above-captioned proceeding on June 4, 1997.<sup>1</sup> In the Notice, the Commission has requested comment on, among other things, the appropriate level of regulation for foreign-affiliated carriers in light of the World Trade Organization Basic Telecom Agreement ("WTO Agreement").

**I. INTRODUCTION AND STATEMENT OF INTEREST**

Telia NA is authorized to provide both facilities-based and resold international telecommunications services and is affiliated with Telia AB, which provides local, domestic long-distance, and international telecommunications services in Sweden. A signatory to the WTO Agreement and Reference Paper, Sweden already provides market access for all

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<sup>1</sup> See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Order and Notice of Proposed Rulemaking, IB Docket No. 97-142, FCC 97-195 (rel. June 4, 1997) ("Notice").

telecommunications services and facilities, permits foreign investment in all telecommunications services and facilities, and has adopted pro-competitive regulatory principles.

Like the Commission, Telia NA believes that the WTO Agreement will "alter fundamentally the competitive landscape for telecommunications services."<sup>2</sup> Telia NA is therefore pleased that the Commission has initiated this proceeding to "revisit the regulatory safeguards" that will be applied to foreign-affiliated carriers in this new environment and, in particular, to ensure that these safeguards will be "no more burdensome than necessary."<sup>3</sup> In order to achieve this goal, Telia NA believes that the Commission should implement most of the deregulatory initiatives proposed in the Notice, but should reject requests to impose heavy-handed regulatory burdens on foreign-affiliated carriers that would curtail competition.

## **II. THE COMMISSION SHOULD MINIMIZE THE REGULATORY BURDENS PLACED ON FOREIGN-AFFILIATED CARRIERS**

The majority of the commenting parties -- both U.S. and foreign -- supported the Commission's overall goal of eliminating unnecessary regulatory burdens.<sup>4</sup> In particular, these

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<sup>2</sup> Id. ¶ 2.

<sup>3</sup> Id. ¶ 12.

<sup>4</sup> See Comments of U S West at 8 ("U S West Comments"); Comments of the United States Telephone Association at 5 ("USTA Comments") (urging the Commission to adopt "simple, effective, and non-burdensome rules"); Comments of GTE Service Corporation at 4 ("GTE Comments") (calling "for regulatory restraint at the national level"); Comments of MCI Telecommunications Corporation at 5 ("MCI Comments") (explaining that "strict conditions and requirements should be reserved for carriers that are affiliated or deal with . . . foreign carriers that do not face competition in their home markets"); Comments of Sprint at 19 ("Sprint Comments") (urging the Commission to "more closely tailor its conditions to the dangers presented by a particular application. Excessive or unnecessary conditions will harm competition just as surely as not imposing conditions when they are needed."); Comments of Telecom Finland at 7 ("Telecom Finland Comments"); Comments of Cable & Wireless at 1 ("C&W Comments")

parties urged the Commission to adopt its proposal to apply only "basic" dominant carrier safeguards to U.S. carriers that are affiliated with dominant foreign carriers from WTO countries where facilities-based competition exists.<sup>5</sup> Many of the commenters also supported the Commission's proposal to permit such carriers to add or discontinue circuits without prior approval and to file tariffs for international services on one day's notice under a presumption of lawfulness.<sup>6</sup> These parties, like Telia NA, believe that such measures will benefit "consumers by allowing [foreign-affiliated] carriers to respond more rapidly to competitive pressures to lower prices and improve the quality of service."<sup>7</sup>

Of all the commenting parties, only a few, such as AT&T and PanAmSat, would have the Commission increase, rather than decrease, the regulatory burdens placed on carriers from competitive WTO markets. These parties called upon the Commission to impose rigid structural separation requirements on such carriers<sup>8</sup> and to add to the already comprehensive

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(agreeing with "the Notice's proposal to . . . eliminat[e] regulations currently imposed on foreign-affiliated carriers that are superfluous and prevent foreign-affiliated carriers from competing fully in the U.S. market.").

<sup>5</sup> See Notice ¶ 84.

<sup>6</sup> See id. ¶¶ 94, 96; see also GTE Comments at 22; C&W Comments at 7, 8; Comments of Telefónica Internacional de España, S.A. at 14 ("Telefónica Comments").

<sup>7</sup> Notice ¶ 83; see C&W Comments at 7.

<sup>8</sup> See AT&T Comments at 51; Sprint Comments at 26; Comments of PanAmSat at 5 ("PanAmSat Comments").

"basic" safeguards proposed in the Notice.<sup>9</sup> As demonstrated by the comments, these proposals are "more burdensome than necessary" and therefore should be rejected by the Commission.<sup>10</sup>

As explained by Deutsche Telekom, "the acceleration of competition under the WTO Basic Telecom Agreement will eliminate any theoretical incentive or ability for foreign carriers to engage in [anticompetitive] behavior."<sup>11</sup> By opening foreign markets, the WTO Agreement will enable U.S. carriers to bypass incumbent foreign carriers, either by corresponding with new entrants in WTO markets or by entering these markets themselves and providing end-to-end service through self-correspondence. This, in turn, will effectively eliminate the ability of foreign carriers to discriminate against U.S. carriers in the provision of international transport circuits and gateway switching services and facilities. In this open and competitive environment, an "onerous" structural separation requirement is unnecessary.<sup>12</sup>

The inappropriateness of imposing structural separation and other "enhanced" safeguards on carriers from WTO countries is illustrated by the case of Sweden. The Swedish market, both domestic and international, for telecommunications facilities and services has been

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<sup>9</sup> See AT&T Comments at 47; PanAmSat Comments at 2.

<sup>10</sup> Notice ¶ 78.

<sup>11</sup> See Comments of Deutsche Telekom AG and Deutsche Telekom, Inc. at 23 ("Deutsche Telekom Comments"); see MCI Comments at 6 (recognizing that carriers from WTO countries "present a reduced risk of distorting competition . . ."); Telecom Finland Comments at 7 ("Prior to signing the WTO Basic Telecom Agreement numerous WTO countries . . . opened their telecommunications market to domestic and foreign competition on a level that exceeds the openness of the U.S. telecommunications market. The Commission should have few concerns regarding the level of competition in these countries' domestic telecommunications market."); GTE Comments at 18; C&W Comments at 4.

<sup>12</sup> U S West Comments at 9, 10.

open to foreign entry and competition for years. A number of well-financed competitors have started providing service and, as a result, Telia AB's share of the Swedish international telecommunications services market has declined nearly 30 percent in the past three and one half years and settlement rates in Sweden have been driven down towards cost.<sup>13</sup> These facilities-based competitors have eliminated Telia AB's ability to discriminate against foreign carriers in the provision of international facilities and services. Even if Telia AB had this ability, Sweden's commitments pursuant to the WTO Reference Paper, as well as Swedish and E.U. Competition law,<sup>14</sup> would preclude Telia AB from doing so.

Given the size of many foreign carriers relative to their U.S. counterparts, the risk that cross-subsidization would distort competition in the U.S. international telecommunications market is minimal.<sup>15</sup> Moreover, the Commission's adoption of benchmark settlement rates, in general, and the requirement that U.S. carriers settle with foreign affiliates at rates that are at

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<sup>13</sup> See "Modern Telecommunications for Everybody," Green Paper on a Revised Swedish Telecommunications Regulation" (Aug. 15, 1996). The foreign carriers operating in Sweden include British Telecom, MCI, France Telecom, Cyberlink, TeleDanmark, Telenor, and MFS/Worldcom.

<sup>14</sup> Both Section 19 of Sweden's Competition Act and Article 86 of the Treaty of Rome prohibit the abuse of a dominant position.

<sup>15</sup> For example, Telia's 1996 operating revenue was MSEK 44,100 (approximately US\$ 5,578 million using the prevailing currency exchange rate of .1265). By contrast, the operating revenue of many U.S. carriers was much larger. For example: AT&T's total operating revenue for 1996 was \$52.18 billion; GTE's revenue and sales for 1995 were approximately \$20.0 billion; MCI's 1996 operating revenue was \$18.4 billion; and SBC's 1996 operating revenue was \$13.89 billion.

or below the benchmarks, in particular, will be sufficient to prevent leveraging behavior by foreign carriers.<sup>16</sup>

To the extent that there is a risk of anticompetitive conduct in the international market, it exists arguendo in the provision of termination services by entities that control bottleneck facilities at the foreign end of international routes.<sup>17</sup> In the domestic context, however, the Commission has determined that such a risk does not warrant dominant carrier regulation. Indeed, the Commission has recently determined that it is "not necessary" to impose certain separation requirements on the out-of-region interexchange operations of the Bell Operating Companies and independent local exchange carriers, such as GTE.<sup>18</sup> Consistent with this determination, the Commission should not impose structural separation or other enhanced safeguards on carriers from WTO countries that originate traffic in a region (the United States) where they do not control bottleneck facilities.

Instead, the Commission should rely on foreign regulatory authorities in WTO countries to prevent anticompetitive conduct at the terminating end of international routes. Approximately 65 foreign countries adopted the Reference Paper and thus have committed to

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<sup>16</sup> As noted by a number of commenters, there are no documented cases of "leveraging behavior by a foreign carrier." Deutsche Telekom Comments at 22; see C&W Comments at 4; Telefónica Comments at 7. In the absence of any such evidence, it would be premature for the Commission to add to the safeguards adopted in the International Settlement Rates proceeding.

<sup>17</sup> See Comments of Kokusai Denshin Denwa Co. Ltd at 13 ("KDD Comments").

<sup>18</sup> See Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, FCC 97-142, ¶¶ 210, 213 (rel. Apr. 18, 1997) ("We are not persuaded by arguments that, because the BOCs and independent LECs have control over terminating exchange access, they will be able to effect a price squeeze to gain market share by raising the price of terminating access.").

ensure that dominant carriers provide nondiscriminatory and timely interconnection to competitors at cost-oriented rates.<sup>19</sup> For the Commission to impose structural separation and other regulatory requirements on foreign-affiliated carriers from these countries would be to "presuppose that foreign countries will fail to fulfill their commitments under the WTO Agreement."<sup>20</sup> Contrary to the apparent belief of commenters such as AT&T, however, the Commission "must assume the WTO member country at the foreign end of the route has an adequate regulatory regime in place."<sup>21</sup> In this regard, several commenters emphasized that the WTO Agreement and Reference Paper does not provide for the application of the requirements of the Telecommunications Act of 1996, such as structural separation, to the international telecommunications sector.<sup>22</sup>

In addition to being unnecessary, the heightened regulatory safeguards called for by AT&T and others also would be counterproductive. As explained by the Office of the United States Trade Representative, the United States "led the way" in negotiating the WTO Agreement

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<sup>19</sup> Dominant operators in Europe also have a separate obligation under Article 86 of the Treaty of Rome, which prohibits the abuse of a dominant position, to provide non-discriminatory interconnection. See "Guidelines on the Application of EEC Competition Rules in the Telecommunications Sector," ¶¶ 78-121 (91/C 233/02) (1991).

<sup>20</sup> MCI Comments at 6; see Deutsche Telekom Comments at 23.

<sup>21</sup> Deutsche Telekom Comments at 25.

<sup>22</sup> See GTE Comments at 3 (the WTO "Reference Paper does not enact the Telecommunications Act on an international basis."); U S West Comments at 9 ("the framework of the 1996 Act is not the only blueprint for developing competitive markets for the provision of basic telephone service"); Comments of SBC Communications, Inc. at 5 ("SBC Comments") ("it is not so obvious that the Reference Paper compels a regulatory regime identical to that adopted by the U.S."); USTA Comments at 3 ("the U.S. model should not be construed as the only regulatory model that will satisfy the open entry and pro-competition requirements of the Agreement and Reference Paper.").

and will similarly "lead the way" in implementing the commitments made pursuant to the Agreement and Reference Paper.<sup>23</sup> Simply put, "[m]uch of the world will look to leadership from the Commission."<sup>24</sup> With this in mind, a number of commenters cautioned that subjecting foreign-affiliated carriers to stringent requirements could provide foreign governments with protectionist inclinations with a pretext for imposing even more stringent requirements on U.S. carriers and thus undermine the very agreement which the U.S. worked so hard to conclude.<sup>25</sup> "This result", Telmex explained, "is exactly the opposite of what the U.S. Government sought to achieve with the WTO Agreement . . ."<sup>26</sup> Further, it would be inconsistent with the National Treatment requirement of GATS to single out foreign-affiliated, but not U.S.-owned, carriers for special regulatory burdens.<sup>27</sup>

As pointed out by Cable & Wireless, adopting burdensome regulatory requirements, such as those suggested by AT&T and PanAmSat, also would frustrate the Commission's primary goal:<sup>28</sup> "to promote effective competition in the U.S. telecommunications market, particularly the market for international telecommunications services."<sup>29</sup>

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<sup>23</sup> Comments of the Office of the United States Trade Representative at 2.

<sup>24</sup> France Telecom Comments at 4; see Comments of Telefonos de Mexico S.A. de C.V. at 4 ("Telmex Comments").

<sup>25</sup> See MCI Comments at 6; France Telecom Comments at 5, 6; GTE Comments at 3; Telefónica Comments at 2, 5; Deutsche Telekom Comments at 4; Telmex Comments at 8.

<sup>26</sup> Telmex Comments at 8.

<sup>27</sup> See Deutsche Telekom Comments at 25.

<sup>28</sup> See C&W Comments at 4.

<sup>29</sup> Notice ¶ 16.

In its comments, Sprint correctly observed that "[e]xcessive or unnecessary conditions will harm competition just as surely as not imposing conditions when they are needed."<sup>30</sup> By hindering the ability of foreign-affiliated carriers to compete, the excessive safeguards proposed by some of the commenters would deny the U.S. public the substantial benefits -- lower prices, greater innovation, and expanded service offerings -- to be derived from the competition made possible by the WTO Agreement.

The imposition of rigid structural separation requirements on foreign-affiliated carriers also could frustrate another of the Commission's stated goals. Specifically, it could "impede innovations that would lower prices and create new ways of organizing the supply and distribution of international communications services."<sup>31</sup> For example, if structural separation is required, it is not clear that a single supplier could provide a seamless end-to-end international telecommunications service between the U.S. and its home market. Plainly, the Commission should seek to promote, rather than preclude, innovative commercial arrangements that will lower the cost of international telecommunications services.<sup>32</sup>

The Commission has repeatedly stated that "full facilities-based competition on the foreign end of a U.S. international route is ultimately the most potent safeguard against

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<sup>30</sup> Sprint Comments at 4; see Deutsche Telekom Comments at 30 ("unnecessary or redundant regulations can be a potent competitive handicap for regulated carriers"); C&W Comments at 4 ("unnecessary safeguards "lessen competition by hindering foreign carriers' ability to compete"); GTE Comments at 19. By virtue of its dominant status, on the U.S.-Sweden route Telia NA is already at a competitive disadvantage with respect to its much larger competitors, such as AT&T, MCI, and Sprint.

<sup>31</sup> Policy Statement on International Accounting Rate Reform, 11 FCC Rcd 3146 (1996).

<sup>32</sup> Id.; Regulation of International Accounting Rates, CC Docket No. 90-337, FCC 96-459, ¶ 16 (Dec. 3, 1996).

anticompetitive effects from the entry of a foreign country in the U.S. international services market."<sup>33</sup> Where such competition exists, the Commission should allow it to "play its course with a strict minimum of regulatory invention."<sup>34</sup> This means that, if the Commission determines that regulation is necessary, the Commission should, at a maximum, only apply "basic" dominant carrier safeguards to carriers whose foreign affiliates face facilities-based competition. Accordingly, the Commission should eliminate the prior authorization requirement for the addition or discontinuation of circuits and permit foreign-affiliated carriers to file international service tariffs on one day's notice.<sup>35</sup> Doing so will benefit consumers by permitting carriers to respond promptly to competitive pressures by lowering prices and adding new and expanded services.<sup>36</sup>

Even the Commission's proposal to apply "basic" dominant carrier safeguards to U.S. carriers on routes to their "home markets, however, is suspect. First, the increased number of competitors and facilities in the international market greatly reduces the potential for anticompetitive behavior by foreign carriers. Second, as the telecommunications market becomes increasingly global, the significance accorded to any advantages a given carrier is presumed to have in its home market is decreased. Third, many foreign-affiliated carriers are relatively small compared to U.S. carriers that are, or have been, deemed non-dominant, and these larger carriers enjoy the advantages of economies of scale. Fourth, the Commission has

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<sup>33</sup> Market Entry and Regulation of Foreign-affiliated Entities, 11 FCC Rcd 3873, 3880 (1995); id. at 3891.

<sup>34</sup> France Telecom Comments at 11.

<sup>35</sup> See GTE Comments at 22; C&W Comments at 7, 8.

<sup>36</sup> See C&W Comments at 7.

already determined that all local exchange carriers, including the BOCs, should be treated as non-dominant with respect to interexchange traffic that originates outside their local exchange area, even if the traffic is terminated in their local exchange area. In light of the foregoing, the Commission should seek to decrease, rather than increase, the level of regulation imposed on foreign-affiliated carriers.

### **III. THE COMMISSION SHOULD PROMOTE ALTERNATE SETTLEMENT ARRANGEMENTS INVOLVING CARRIERS FROM WTO COUNTRIES**

The Commission should bring its "settlements policy in line with the reality of the global market" shaped by the WTO Agreement.<sup>37</sup> As recognized in the Notice, a presumption in favor of accounting rate flexibility for carriers from WTO countries is "appropriate because . . . [the] concern about discriminatory treatment of U.S. carriers by foreign carriers with market power is significantly diminished by the commitments to fair competition and fair regulatory treatment made by WTO Member countries."<sup>38</sup> Telia NA therefore agrees with FaciliCom, France Telecom, and GTE that accounting rate "flexibility should be the rule for all operators from WTO countries."<sup>39</sup>

The Commission should take advantage of the opportunity presented by this proceeding to confirm that, for carriers from competitive WTO countries with settlement rates at or below the benchmark levels, the use of the "settlements" regime is no longer necessary. Indeed, such carriers should be encouraged to enter into alternate arrangements, including

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<sup>37</sup> Notice ¶ 60.

<sup>38</sup> Id. ¶ 150.

<sup>39</sup> France Telecom Comments at 18; see FaciliCom Comments at 8; GTE Comments at 22.

arrangements where a carrier -- either by itself or in combination with a foreign affiliate -- provides a "full circuit" that is interconnected at either end under non-discriminatory rates, terms and conditions. By permitting carriers from WTO countries regulatory flexibility to enter into innovative commercial arrangements, the Commission will promote competition and thus ensure that U.S. consumers have access to a wide variety of high-quality, affordable international telecommunications services.

## CONCLUSION

For the foregoing reasons, the Commission should minimize the regulatory burdens placed on foreign-affiliated carriers and adopt its tentative conclusions to permit foreign-affiliated carriers regulated as dominant to add and discontinue circuits without prior authorization and permit such carriers to file international service tariffs on one day's notice. Further, the Commission should reject proposals to subject foreign affiliated carriers to unnecessary regulatory burdens, such as structural separation. Finally, as competition develops in the international telecommunications market develops, Telia NA urges the Commission to reconsider the need for any regulatory safeguards adopted in this proceeding.

Respectfully submitted,

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